

**DOCKET FILE COPY ORIGINAL**  
Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

APR 21 1997

**In the Matter of**

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**Amendment of the Commission's Rules  
Regarding Multiple Address Systems**

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**WT Docket No. 97-81**

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**To: The Commission**

**COMMENTS OF  
THE RURAL TELECOMMUNICATIONS GROUP**

The Rural Telecommunications Group ("RTG"), by its attorneys, respectfully submits these comments in response to the *Notice of Proposed Rulemaking ("NPRM")* released by the Federal Communications Commission ("FCC" or "Commission") on February 27, 1997, in WT Docket No. 97-81. By these comments, RTG specifically requests that the Commission recognize Congress' inclusion of rural telephone companies in the category of "designated entities," and carve for rural telephone companies the specific preferences they require in order to effectively participate in the provision of multiple address system ("MAS") services to rural America.

**I. STATEMENT OF INTEREST**

RTG is a group of concerned rural telephone companies who have joined together to promote the efforts of its member rural telephone companies to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and underserved sections of the country.

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## II. DISCUSSION

### A. The Commission Must Craft Specific Provisions Designed to Provide Rural Telephone Companies an Opportunity to Provide MAS.

The Communications Act of 1934, as amended ("Communications Act" or "Act"), requires the Commission to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas."<sup>1</sup> One significant means of accomplishing this goal is to ensure that rural telephone companies "are given an opportunity to participate in the provision of spectrum based services."<sup>2</sup> Yet, each time the Commission promulgates rules to govern new service offerings, it fails to provide rural telephone companies with the specific preferences they require in order to deploy these new services to rural areas, and to satisfy Congress' desire that rural Americans be afforded communications opportunities similar to those of their urban counterparts at reasonably related prices.<sup>3</sup> The only designated entity preference tailored to

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<sup>1</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>2</sup> 47 U.S.C. § 309(j)(4)(D).

<sup>3</sup> See, e.g., *In re* Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, CC Docket No. 92-297, FCC 97-82 at ¶ 362 (rel. March 13, 1997) ("*LMDS Second R&O*") (special provisions not needed for rural telephone companies); *In re* Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), *Report and Order*, GN Docket No. 96-228, FCC 97-50 at ¶ 200 (rel. February 19, 1997) ("*WCS R&O*") (no provisions for rural telephone companies); *In re* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Narrowband PCS, *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, PP Docket No. 93-253, 10 FCC Rcd 175 (1994) (provisions for rural telephone companies unnecessary); *In re* Amendment of Parts 21 and 74 of the Commission's Rules

(continued...)

rural telephone companies was geographic partitioning, and the Commission has since eliminated that preference.<sup>4</sup>

In Section 309(j) of the Communications Act, Congress enumerated the separate and distinct entities that are to receive special provisions in the dispensing of telecommunications licenses. Section 309(j)(4)(D) directs the Commission to:

ensure that small businesses, **rural telephone companies**, and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services.<sup>5</sup>

The legislative history of the 1993 Budget Act<sup>6</sup> clearly states:

The Conferees also agreed to require that the Commission provide economic opportunities for rural telephone companies **in addition to** small businesses and businesses owned by members of minority groups and women.<sup>7</sup>

Congress did not mean that the Commission should award preferences only to rural telephone companies that are small businesses. Congress expressly lists rural telephone companies in addition to small businesses as a designated entity class entitled to special

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<sup>3</sup>(...continued)

with regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Fixed Service and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, MM Docket No. 94-131, PP Docket No. 93-253, *Report and Order*, 10 FCC Rcd 9589 (1995) (no special provisions for rural telephone companies).

<sup>4</sup> See *In re Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Service Licensees*, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-148, FCC 96-474 (rel. December 20, 1996).

<sup>5</sup> 47 U.S.C. § 309(j)(4)(D) (emphasis added).

<sup>6</sup> Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66 § 6002, 107 Stat. 312 (codified as amended at 47 U.S.C. § 309(j) (1996)).

<sup>7</sup> H.R. Rep. No. 213, 103d Cong., 1st Sess. 484 (1993) (emphasis added).

provisions. The obligation the Commission must meet for rural telephone companies is related to, but independent of, its similar obligations to other "designated entities."

In the proposed MAS auction rules, the Commission continues to fall short of its statutory obligation. The *NPRM* dedicates three short paragraphs to the subject of "Small Business," but once again proposes no designated entity preferences crafted specifically for rural telephone companies.<sup>8</sup> The Commission's request for comments on how it should define "small business" in the context of the MAS service, and what types of preferences "small businesses" should be offered in the MAS auction, does not sufficiently address what preferences the Commission should provide to *rural telephone companies* in order to ensure the ability of such companies to acquire MAS spectrum and to provide MAS services to their rural subscribers at reasonably affordable prices.

In the *NPRM*, the Commission asks "whether small business provisions are sufficient to promote participation by . . . rural telephone companies."<sup>9</sup> The answer is "No." The Commission's unpredictable definition of small business unduly complicates rural telephone companies' ability to formulate sound business plans well in advance of a proposed auction.<sup>10</sup>

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<sup>8</sup> *NPRM* at ¶¶ 60-2.

<sup>9</sup> *NPRM* at ¶ 62.

<sup>10</sup> The following is a list of "small business" definitions utilized by the Commission: *In re* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348 (1994) (no more than \$6 million net worth, and federal income taxes, does not have in excess of \$2 million in annual profits for the two previous years); *In re* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fourth Report and Order*, 9 FCC Rcd 2330, 2336 (1994) ("IVDS Auction" - same as above); *In re* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Fifth Report and Order*, 9 FCC Rcd 5532 (continued...)

Rural telephone companies that are the sole source of telecommunications services for their rural service areas often find that they are unable to provide a particular service to their customers because they cannot compete in an auction without the benefit of bidding credits, installment payment plans, or reduced down and upfront payments. For those rural telephone companies that do not meet, and cannot restructure themselves to meet, the small business criteria "*du jour*," those preferences are foreclosed to them.

The proposed partitioning right, which, unlike the rules initially adopted for the PCS auction, does not apply exclusively to rural telephone companies, is also insufficient to promote participation in MAS by rural telephone companies. Because the FCC proposes no entrepreneurs' block for the MAS auction, rural telephone companies are forced to either swim with the big fish, or try their luck at convincing an MAS license winner to geographically partition. Despite the Commission's economic theories, license winners are not interested in carving up license areas. It has been RTG's experience that licensees desire to

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<sup>10</sup>(...continued)

(1994) (annual gross revenues of no more than \$40 million for the three preceding years -- applied in both narrowband and broadband PCS, and Multipoint Distribution Service, and proposed for 37.0-38.6 GHz and 38.6-40.0 GHz Bands); *In re* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2075-77 (1996) ("small" businesses are those that gross \$15 million or less for the three preceding years, and "very small" businesses are those that gross \$3 million or less for the three preceding years -- used for 900 MHz auction, proposed for 800 MHz and 220 MHz auctions); 47 C.F.R. § 24.720(b) (broadband PCS D, E and F Block auction, defined "small" business as one with gross revenues of \$40 million or less for preceding three years, and "very small" business as one with gross revenues of \$15 million or less for the preceding three years).

keep their licenses whole so that the wireless systems are more attractive to companies seeking to make wireless acquisitions.

Every new service auction presents the Commission with an opportunity to ensure that the new service reaches rural America quickly, and that rural telephone companies are provided with their own economic opportunities to participate in the provision of such spectrum-based service. The Commission should start fulfilling its responsibilities under Section 309(j) of the Act by providing rural telephone companies an opportunity to provide MAS.

**B. Rural Telephone Companies Need Specific Benefits.**

In general, rural telephone companies would greatly benefit from a standard definition of "rural telephone company," along with standard bidding credits and installment payment plans for use by all rural telephone companies in all future auctions.

With specific regard to the MAS service, rural telephone companies would have a much improved opportunity to acquire MAS licenses if any, or all, of the following suggestions were put in place:

- (1) Set aside a "rural telephone company" block of MAS licenses foreclosed to bidding from non-rural telecommunications providers;
- (2) Provide a 25 percent bidding credit for rural telephone companies, with a quarterly installment payment plan;
- (3) Establish the right of rural telephone companies to exclusively partition MAS Economic Area ("EA") licenses, or, in the alternative;

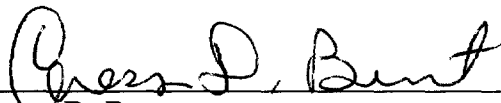
- (4) Grant rural telephone companies a right of first refusal to partition an MAS EA license, to be exercised within a specific time limit following the close of the auction. *See* Petition for Reconsideration filed by the National Telephone Cooperative Association and the Independent Alliance on February 5, 1997 in WT Docket No. 96-148 and related comments of RTG filed March 26, 1997.

### III. CONCLUSION

Every auction that has occurred without the assistance to rural telephone companies that Congress mandated results in another service that likely will not reach rural America in either a timely or economically reasonable fashion. Every auction to come is an opportunity for the Commission to correct its course, and meet its obligations under Section 309(j) of the Communications Act to actively ensure that rural telephone companies become efficient providers of new services to their rural subscribers. An opportunity presents itself now. RTG respectfully requests that the Commission avail itself of it.

Respectfully submitted,

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